



PATENT
Docket 03-456-B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul Campbell Examiner: Michael P. Ferguson
Serial No.: 10/740,697 Group Art Unit: 3679
Title: RETAINING LOCKING SYSTEM
FOR CHAIN LINK FENCE SLATS
Filed: December 18, 2003

RESPONSE TO SECOND NOTICE OF NON-COMPLIANT APPEAL BRIEF

In response to the Notice mailed 06/16/2006, the Applicant has revised his Appeal Brief to present each argument under a separate heading for each ground of rejection on appeal. With this revision the Appeal Brief will now meet requirements. The Examiner's assistance in clarifying requirements during a recent telephone call is gratefully acknowledged. A credit card authorization for the fee for a one month's extension of time to reply is enclosed.

Respectfully submitted,

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SECOND REVISED APPEAL BRIEF

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(1) REAL PARTY IN INTEREST

The real party in interest is the inventor, Paul Campbell

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

(3) STATUS OF CLAIMS.

In response to an Election/Restriction requirement, claims 5-7, 9, 10 and 13 currently stand withdrawn. The remaining claims, 1-4, 8, 11, 12 and 14 are pending but finally rejected. The Examiner's decision, rejecting claims 1-4, 8, 11, 12 and 14, is being appealed.

(4) STATUS OF AMENDMENTS

No amendments were filed subsequent to final rejection.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 (page 8, line 13 to page 9, line 8) As illustrated in **Figures 1, 2, 2A and 4**, a retaining-locking system **10** for chain link fence slats **15** is provided. The system **10** has a plurality of fence slat elements **20** that are sized and shaped to be interwoven between consecutive links **25** of a chain link fence. Each of the slat elements **20** have a first end **30**, a second end **35**, a front surface **40**, a back surface **45**, a first side edge **50**, a second side edge **55** and a notch **60**. The notch **60** is orthogonally oriented to a long axis **65** of the slat **15** and is located between the first **30** and second **35** end and extends inwardly from the front surface **40** toward the back surface **45** for a first predetermined distance **70**.

A retaining-locking strip is provided **75**. The strip **75** is formed of resilient material, having a first end **80**, a second end (not shown), an inner surface **90**, an outer surface **95**, an upper edge **100**, a lower edge **105** and at least one securing protrusion **110**. The securing protrusion **110** has a base **115**, a back surface **120**, an upper surface **125**, a lower surface **130** and is sized and shaped to fit slidably within the notch **60**. The protrusion **110** is located upon the outer surface **95** of the strip **75**. When the slat elements **20** are interwoven into between consecutive links **25** of a chain link fence with each of the notches **60** aligned with one another, with the retaining-locking strip **75** inserted between the slat elements **20** and the links **25**, oriented orthogonally to the slats **15** with the securing protrusion **110** disposed within the slats **15**, the strip **75** will urge the slats **15** toward the links **25**, thereby retaining the slats **15** within the chain link fence.

Claim 2 (page 9, lines 9-10). In a variant of the invention, the notch **60** in each of the slat elements **20** is rectangular in cross-section.

Claim 3 (page 9, lines 11-12). In another variant of the invention, the inner surface **90** of the retaining-locking strip **75** is concave and the outer surface **95** of the strip **75** is convex.

Claim 4 (page 9, lines 13-16). In a further variant of the invention, as illustrated in **Figures 16 and 17**, the inner surface **90** of the retaining-locking strip **75** is substantially parallel to the outer surface **95** of the strip **75** when the strip **75** is compressed between the securing protrusion **110** and the inner surface **90**.

Claim 8 (page 10, lines 6-11). In still a further variant, as illustrated in **Figures 2, 2A, and 3**, either the first **30** or second **35** end of the slat element **20** is pointed, thereby permitting the retaining-locking strip **75** to be interwoven first between consecutive links **25** of the chain link fence. Successive slat elements **20** could then be interwoven orthogonally between consecutive links **25** of the chain link fence, the pointed end permitting the slat element **20** to compress the retaining-locking strip **75** until the securing protrusion **110** is aligned with the notch **60**.

Claim 11 (page 10, lines 18-19). In a further variant, as illustrated in **Figure 16**, the slat elements **20** are of tubular construction.

Claim 12 (page 10, lines 20-21). In still a further variant, as illustrated in **Figure 19**, the slat elements **20** include at least one internal reinforcing rib **170**.

Claim 14 (page 11, lines 3-6). In yet another variant, as illustrated in **Figure 18**, the inner surface **90** of the retaining-locking strip **75** is concave and the outer surface **95** of the strip **75** is convex. The retaining-locking strip **75** has at least one securing protrusion **110** located at a point **175** spaced from at least one of either the upper edge **100** or the lower edge **105** of the strip **75**.

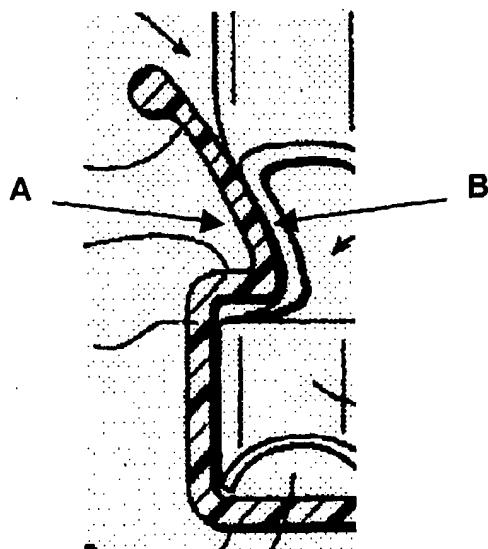
(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEALA. Claim Rejections -35 USC § 102

Concise Statement: The Examiner finally rejected Claims 1-4, 8, 11 and 14 under 35 U.S.C. 102(b) as being anticipated by Abbott (US 5,465,941).

The Examiner stated: “As to claim 1, Abbott discloses a retaining-locking system for chain link fence slats, comprising:

a plurality of fence slat elements 60, the slat elements being sized and shaped to be interwoven between consecutive links 12 of a chain link fence; each of the slat elements having a first end, a second end, a front surface 80, back surface 78, a first side edge 82, a second side edge 82 and a notch 80 orthogonally oriented to a long axis of the slat, being disposed between the first end and the second end and extending inwardly from the front surface toward the back surface (as shown in Figure 9) for a first predetermined distance; a retaining-locking strip 64, the strip being formed of resilient material, having a first end, a second end, an inner surface A (Figure 7 reprinted with annotations below), an outer surface B, an upper edge 76, a lower edge 72 and a securing protrusion 75; the securing protrusion having a base, a back surface, an upper surface 76, a lower surface 75 and being sized and shaped to fit slidably within the notch and being disposed upon the outer surface of the strip; and whereby, when the slat elements are interwoven into between consecutive links of a chain link fence with each of the notches aligned with one another, the retaining- locking strip inserted between the slat elements and the links, oriented orthogonally to the slats with the securing protrusion disposed within the slats,

the strip will urge the slats toward the links, thereby retaining the slats within the chain link fence (Figures 6-9)



As to claim 2, Abbott discloses a retaining-locking system wherein the notch 80 in each of the slat elements 60 is rectangular in cross-section (the cross-section of notch 80 is rectangular, as shown in Figure 9).

As to claim 3, Abbott discloses a retaining-locking system wherein the inner surface A of the retaining-locking strip 64 is concave and the outer surface B of the retaining-locking strip is convex (Figure 7).

As to claim 4, Abbott discloses a retaining-locking system wherein the inner surface A of the retaining-locking strip 64 is substantially parallel to the outer surface B of the retaining-locking strip when the strip is compressed between the securing protrusion 75 and the inner surface (Figure 7).

As to claim 8, Abbott discloses a retaining-locking system wherein either of the first end and the second end of the slat element 60 is pointed (slat element 60 is tapered to a rounded

point, as shown in Figure 8), thereby permitting the retaining-locking strip 64 to be interwoven first between consecutive links 12 of the chain link fence and successive slat elements to then be interwoven orthogonally between consecutive links of the chain link fence, the (rounded point) pointed end permitting the slat element to compress the retaining-locking strip until the securing protrusion 75 is aligned with the notch 80 (Figures 6 and 8).

As to claim 11, Abbott discloses a retaining-locking system wherein the slat elements 60 are of tubular construction (Figure 9).

As to claim 14, Abbott discloses a retaining-locking system wherein the inner surface A of the retaining-locking strip 64 is concave and the outer surface B of the retaining-locking strip is convex, the retaining-locking strip having a securing protrusion 75 disposed at a point spaced from at least one of the upper edge 76 and the lower edge 72 of the strip (Figure 7)."

B. Claim Rejections -35 USC § 103

Concise Statement: The Examiner finally rejected Claim 12 under 35 U.S.C. 103(a) as being unpatentable over Abbott in view of Finkeistein (US 5,465,941).

The Examiner stated: "As to claim 12, Abbott fails to disclose a retaining-locking system wherein the slat elements include an internal reinforcing rib.

Finkeistein teaches a retaining-locking system wherein slat elements 20 include an internal reinforcing rib 31; the rib providing for a more rigid slat element and preventing crimping of the slat element during installation (column 3 lines 24-29, Figure 2). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a retaining-locking system as disclosed by Abbott to have slat elements including an internal reinforcing rib as taught by Finkeistein in order to provide for a more rigid slat element and prevent crimping of the slat element during installation."

C. Response to Applicant's Arguments

Concise Statement: The Examiner was not persuaded by Applicant's arguments filed April 15, 2005.

The Examiner stated: "As to claim 1, Attorney argues that: Abbott does not disclose a retaining-locking system comprising slat elements each having notch extending inwardly from the front surface toward the back surface. Examiner disagrees. As to claim 1, Abbott discloses a retaining-locking system comprising slat elements 60 each having notch 80 extending inwardly from the front surface 80 toward the back surface 78 (as shown in Figure 9).

As to claim 2, Attorney argues that: Abbott does not disclose a retaining-locking system wherein the notch in each of the slat elements is rectangular in cross-section. Examiner disagrees. As to claim 2, Abbott discloses a retaining-locking system wherein the notch 80 in each of the slat elements 60 is rectangular in cross-section (the cross-section of notch 80 is rectangular, as shown in Figure 9).

As to claim 8, Attorney argues that: Abbott does not disclose a retaining-locking system wherein either of the first end and the second end of the slat element is pointed. Examiner disagrees. As to claim 8, Abbott discloses a retaining-locking system wherein either of the first end and the second end of the slat element 60 is pointed (slat element 60 is tapered to a rounded point, as shown in Figure 8)."

(7) ARGUMENTSA. Claim Rejections -35 USC § 102Introduction and Citations

Applicant respectfully submits that this rejection is legally and technically in error.

“Under section 102(b), anticipation requires that the prior art reference disclose, either expressly or under the principles of inherency, every limitation of the claim. . . . But to be prior art under section 102(b), a reference must be enabling. . . . That is, it must put the claimed invention in the hand of one skilled in the art. . . . The examiner bears the burden of presenting at least a *prima facie* case of anticipation.” **In re Sun**, 31 USPQ 2d 1451, 1453 (Fed. Cir. 1993) (unpublished)

“Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” **W.L. Gore & Assocs. v. Garlock, Inc.**, 220 USPQ 303, 313 (Fed. Cir. 1983), **cert. denied**, 469 U.S. 851 (1984)

“The claims here define the invention in terms of several specific ‘means-plus-function’ elements. The limitations which must be met by an anticipatory reference are those set forth in each statement of function. . . . Such a limitation cannot be met by an element in a reference that performs a different function, even though it may be part of a device embodying the same general overall concept.” **RCA Corp. v. Applied Digital Data Sys., Inc.**, 221 USPQ 385, 389 n.5 (Fed. Cir. 1984)

“Claim interpretation proceeds under the guidelines set forth by the Markman case. **Markman**, 116 S. Ct. 1384; **Markman** 52 F.3d at 979. This court, speaking in banc, restated familiar principles of claim interpretation:

To ascertain the meaning of claims, we consider three sources: The claims, the specification, and the prosecution history. . . . Expert testimony, including evidence of how those skilled in the art would interpret the claims, may also be used.

Markman, 52 F.3d at 979 (citations omitted). The claim language itself defines the scope of the claim. See **York Prods., Inc. v. Central Tractor Farm & Family**

Center, 99 F.3d 1568, 1572, 40 USPQ 2d 1619, 1622 (Fed. Cir. 1996). To learn the necessary context for understanding the claim language, however, a construing court may consult other sources, including the patent specification, the administrative record of patent acquisition, expert commentary from those of skill in the art, and other relevant extrinsic evidence. *Markman*, 52 F.3d at 979. In other words, a construing court does not accord the specification, prosecution history, and other relevant evidence the same weight as the claims themselves, but consults these sources to give the necessary context to the claim language.” **Eastman Kodak Co. v. Goodyear Tire & Rubber Co.**, 42 USPQ 2d 1737, 1740 (Fed. Cir. 1997)

Claim 1 is not anticipated by Abbott because construction of the slat elements is different in the instant invention and Abbot, two notches and resiliency are required in Abbot, and not every element of the claim is shown in Abbot.

As can be clearly seen in **Figure 1**, the notch **60** extends from front surface **40** toward back surface **45**, rather than from first side edge **50** toward second side edge **55**. This construction is also seen in **Figures 2, 2A and 3**. **Figure 1** of the instant invention is a front view while **Figures 2, 2A and 3** are side views. On the other hand, in *Abbott* the notches **22** on **Figure 3** and **66** on **Figure 8**, extend from one lateral edge **82** toward the opposite lateral edge **82**. This can be more clearly understood from **Figures 5A and 5B**. Thus the construction of the slat elements of the instant invention is substantially different from that shown in *Abbot*.

Also, *Abbott* requires two notches and a slat formed of resilient material.

“Inserting the bottom end of the slat 60 further into the rail channel 84 allow (sic) the slat ears 62 to elastically reform (sic) so that the front and back walls 78 and 80, respectively, regain their original spaced apart distance. When the slat 60 is completely seated in rail 64, retaining section 76 is positioned over a narrow section 67 of back wall 80 (see FIG. 8) between notches 66. This narrow section of the back wall is less resistant to bending and allows the retaining section 76 to deform the back wall toward front wall 78 without significantly altering the original distance between the front and back walls of the slat ears 62. Thus, the slat ears seat underneath retaining section 76 locking the slat 60 to rail 64.”
(Column 6, lines 52-63) (Emphasis added)

The slats of the instant invention do not require such resilience. In *Abbott* the tips of the slats are deformed as they enter rail channel 84 of rail 64. Further, as shown in Figures 7 and 8 of *Abbot*, the notches of slat 60 must be located adjacent the top and/or bottom of the slat as the rail channel is shaped to snap over the ends of the slats with the deformation of the slat ears 62. In contrast, the single notch 60 of the instant invention can be located at any point between the first end 30 and the second end 35. Thus the means by which the slats are secured to the fence links in *Abbott* is significantly different than that found in the instant invention.

The Examining Attorney describes the retaining-locking strip as: “a retaining-locking strip 64, the strip being formed of resilient material, having a first end, a second end, an inner surface A (Figure 7 reprinted with annotations below), an outer surface B, an upper edge 76, a lower edge 72 and a securing protrusion 75;”

Abbott refers to reference 76 as seen in Figure 7, as “the retaining section” (column 6, line 43) rather than an upper edge and reference 72 as “a horizontally aligned base” (column 6, line 43) rather than a lower edge. Reference 75 is described as “a section” coupling retaining section 76 to the top end of the fastening wall 74 (column 6, lines 40-43). Rail 64 in *Abbott* serves to provide a rail channel 84 which supports the lower end of slat 60. Thus rail 64 is used to secure slats 60 in a manner substantially different from that seen in the instant invention.

The Examining Attorney describes the securing protrusion as follows: “the securing protrusion having a base, a back surface, an upper surface 76, a lower surface 75 and being sized and shaped to fit slidably within the notch and being disposed upon the outer surface of the strip;”

Abbott refers to reference 76 as “the retaining section”, rather than an upper surface. The Examining Attorney had previously referred to it as “an upper edge.” Likewise, *Abbott* refers to reference 75 as “a section” coupling retaining section 76 to the top end of the fastening wall 74.

The Examining Attorney had previously referred to it as “a securing protrusion.” Applicant submits that reference 75 cannot refer to both a “securing protrusion” and a “lower surface” of that same “securing protrusion”.

As seen above, every element of Claim 1 is not shown in *Abbott* and further, the elements shown are not arranged as in the claim. Rather, the Examining Attorney has relabeled the elements of *Abbott* in an attempt to show that these elements fall within the language of Claim 1.

While the invention shown in *Abbott* is a device for retaining privacy slats in a chain link fence, it functions in a decidedly different manner (notches extending inwardly from the side edges of the slats, deformable “ears” on the slat ends), must be fabricated of different materials (resilient slat material) to function properly, and includes functional limitations (retainers may be fitted only at the tops or bottoms of the slats) not found in the instant invention.

Further, the instant invention includes at least one element not found in *Abbott*. The instant invention includes a notch extending from the front surface of the slat (surface facing outwardly from the fence links) toward the back surface (surface facing the fence links). In contrast, *Abbott* describes a pair of notches extending from the lateral edges of the slats toward their opposite edges (See **Figures 6 and 8**). As such, *Abbott* cannot be said to anticipate Claim 1 under 35 USC §102(b).

Claim 2 is additionally not anticipated by Abbott because the notch of Abbott is not rectangular in cross section.

The Examining Attorney states: “As to claim 2, Abbott discloses a retaining-locking system wherein the notch 80 in each of the slat elements 60 is rectangular in cross-section (Figure 9).”

Figure 9 actually discloses “a top sectional view of the locking system shown in **Fig. 6**” (Column 4, lines 5-6). **Figure 6** discloses “... a tubular slat locking system according to another embodiment of the invention” (Column 3, lines 66-67). Reference **80** refers to the back wall of slat **60** (Column 6, lines 31-31). The apparently rectangular “notch” is, in fact, a cross-sectional view of a tubular slat. The notches disclosed in *Abbot*, as shown most clearly in **Figures 6** and **8**, are actually curved, with a flat bottom surface. In contrast, **Figures 1, 2, 2A** and **3** of the present application clearly show notch **60** having a rectangular cross section. Thus *Abbott* cannot be said to anticipate Claim 2. Further, as Claim 2 includes all of the limitations of Claim 1, and Claim 1 has been shown to include elements not found in *Abbott* and thus not anticipated by this reference, Claim 2 is likewise not anticipated.

Claim 3 also is not anticipated because Claim 1 is not.

The Examining Attorney states: “As to claim 3, Abbott discloses a retaining-locking system wherein the inner surface A of the retaining-locking strip 64 is concave and the outer surface B of the retaining-locking strip is convex (Figure 7).”

As Claim 3 includes all of the limitations of Claim 1, and Claim 1 has been shown to include elements not found in *Abbott* and thus not anticipated by this reference, Claim 3 is likewise not anticipated.

Claim 4 is additionally not anticipated by Abbott because the his rail will not urge the outer surface to be parallel to the inner surface.

The Examining Attorney states: “As to claim 4, Abbott discloses a retaining-locking system wherein the inner surface A of the retaining-locking strip 64 is substantially parallel to the outer surface B of the retaining-locking strip when the strip is compressed between the securing protrusion 75 and the inner surface (Figure 7).”

Abbott identifies reference 75 as “a section” coupling retaining section 76 to the top end of the fastening wall 74. If rail 64 is compressed between section 75 and the “outer surface” B, this action will not urge the “inner surface” A to be parallel to the “outer surface” B. Further, as Claim 4 includes all of the limitations of Claim 1, and Claim 1 has been shown to include elements not found in *Abbott* and thus not anticipated by this reference, Claim 4 is likewise not anticipated.

Claim 8 additionally not anticipated by Abbott because his slats are not pointed.

The Examining Attorney states: “As to claim 8, Abbott discloses a retaining-locking system wherein either of the first end and the second end of the slat element 60 is pointed, thereby permitting the retaining-locking strip 64 to be interwoven first between consecutive links 12 of the chain link fence and successive slat elements to then be interwoven orthogonally between consecutive links of the chain link fence, the pointed end permitting the slat element to compress the retaining-locking strip until the securing protrusion 75 is aligned with the notch 80 (Figures 6 and 8).

Slats 60 of *Abbot*, as shown in **Figures 6 and 8**, are not, in fact pointed. Rather, as shown clearly in **Figure 7**, the slats 60 are of full width on their bottom surfaces. While these slat bottoms are slightly curved, they are not pointed as are those of the instant invention. See **Figures 2, 2A and 3** of the present application, plainly showing the pointed lower ends of the slats 20. Further, as Claim 8 includes all of the limitations of Claim 1, and Claim 1 has been shown to include elements not found in *Abbott* and thus not anticipated by this reference, Claim 8 is likewise not anticipated.

Claim 11 also is not anticipated because Claim 1 is not.

The Examining Attorney states: “As to claim 11, Abbott discloses a retaining-locking system wherein the slat elements 60 are of tubular construction (Figure 9).”

As Claim 11 includes all of the limitations of Claim 1, and Claim 1 has been shown to include elements not found in *Abbott* and thus not anticipated by this reference, Claim 11 is likewise not anticipated.

Claim 14 is additionally not anticipated by Abbott because the elements of the claim are not included in Abbot.

The Examining Attorney states: "As to claim 14, Abbott discloses a retaining-locking system wherein the inner surface A of the retaining-locking strip 64 is concave and the outer surface B of the retaining-locking strip is convex, the retaining-locking strip having a securing protrusion 75 disposed at a point spaced from at least one of the upper edge 76 and the lower edge 72 of the strip (Figure 7)."

Abbott identifies reference 75 as "a section" coupling retaining section 76 to the top end of the fastening wall 74, rather than a securing protrusion. *Abbott* also identifies reference 72 as a "horizontally aligned base" rather than a lower edge of the strip and 76 as a "retaining section" rather than an upper edge, in descriptions relating to **Figure 7, 8 and 9**. As such, the elements of Claim 14 are not shown in *Abbot*. Further, As Claim 14 includes all of the limitations of Claim 1, and Claim 1 has been shown to include elements not found in *Abbott* and thus not anticipated by this reference, Claim 14 is likewise not anticipated.

B. Claim Rejections -35 U.S.C. § 103, Claim 12 is not obvious because claim 1 does not include all the elements of Abbott.

Applicant respectfully submits that this rejection is in error.

Obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. The prior art of record fails to provide any such suggestion or incentive. *ACS Hosp. Sys., Inc. v. Montefiore*

Hosp., 221 USPQ 929, 932, 933 (Fed. Cir. 1984)

As Claim 12 includes all of the limitations of Claim 1, and Claim 1 has been shown to include elements not found in *Abbot*, the combination of *Abbott* and *Finkelstein* will not yield the instant invention. As such, it would not be obvious to one ordinarily skilled in the art to make the combination of these two references. Further, neither reference contains any teaching or suggestion to make the combination proposed by the Examining Attorney.

C. Response to Applicant's Arguments

Claim 1 - the rectangular notch is really a cross-sectional view.

The Examiner stated: "As to claim 1, Attorney argues that: Abbott does not disclose a retaining-locking system comprising slat elements each having notch extending inwardly from the front surface toward the back surface. Examiner disagrees. As to claim 1, Abbott discloses a retaining-locking system comprising slat elements 60 each having notch 80 extending inwardly from the front surface 80 toward the back surface 78 (as shown in Figure 9)."

Attorney points out that **Figure 9** of *Abbott* actually discloses "a top sectional view of the locking system shown in **Fig. 6**" (Column 4, lines 5-6) although the cross-sectional line 9-9 is shown on Figure 8, rather than 6. **Figure 6** discloses "... a tubular slat locking system according to another embodiment of the invention" (Column 3, lines 66-67). Figure 8 discloses "... a front sectional view of the locking system shown in Figure 6 Column 4, lines 3-4)." Reference **80** refers to the back wall of slat **60** (Column 6, lines 31-31). The apparently rectangular "notch" is, in fact, a cross-sectional view of a tubular slat. The notches disclosed in *Abbot*, as shown most clearly in **Figures 6 and 8**, are actually curved, with a flat bottom surface. In contrast, **Figures 1, 2, 2A and 3** of the present application clearly show notch **60** having a rectangular cross section.

Claim 2 - the rectangular notch is really a cross-sectional view.

The Examiner stated: "As to claim 2, Attorney argues that: Abbott does not disclose a retaining-locking system wherein the notch in each of the slat elements is rectangular in cross-section. Examiner disagrees. As to claim 2, Abbott discloses a retaining-locking system wherein the notch 80 in each of the slat elements 60 is rectangular in cross-section (the cross-section of notch 80 is rectangular, as shown in Figure 9)."

Attorney points out that **Figure 9** of *Abbott* actually discloses "a top sectional view of the locking system shown in **Fig. 6**" (Column 4, lines 5-6) although the cross-sectional line 9-9 is shown on Figure 8, rather than 6. **Figure 6** discloses "... a tubular slat locking system according to another embodiment of the invention" (Column 3, lines 66-67). Figure 8 discloses "... a front sectional view of the locking system shown in Figure 6 Column 4, lines 3-4)." Reference 80 refers to the back wall of slat **60** (Column 6, lines 31-31). The apparently rectangular "notch" is, in fact, a cross-sectional view of a tubular slat. The notches disclosed in *Abbot*, as shown most clearly in **Figures 6 and 8**, are actually curved, with a flat bottom surface. In contrast, **Figures 1, 2, 2A and 3** of the present application clearly show notch **60** having a rectangular cross section.

Claim 8 – slats of Abbott are not pointed.

The Examiner stated: "As to claim 8, Attorney argues that: Abbott does not disclose a retaining-locking system wherein either of the first end and the second end of the slat element is pointed. Examiner disagrees. As to claim 8, Abbott discloses a retaining-locking system wherein either of the first end and the second end of the slat element 60 is pointed (slat element 60 is tapered to a rounded point, as shown in Figure 8)."

Slats **60** of *Abbot*, as shown in **Figures 6 and 8**, are not, in fact pointed. Rather, as shown clearly in **Figure 7**, the slats **60** are of full width on their bottom surfaces. While these slat bottoms are slightly curved, they are not pointed as are those of the instant invention. See

Figures 2, 2A and 3 of the present application, plainly showing the pointed lower ends of the slats **20**. Further, as Claim 8 includes all of the limitations of Claim 1, and Claim 1 has been shown to include elements not found in *Abbott* and thus not anticipated by this reference, Claim 8 is likewise not anticipated:

Reversal of the Examiner's rejection and early allowance of this application are respectfully requested in view of the above presented remarks. The \$250 fee was submitted previously.

Respectfully submitted,



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(8) CLAIMS APPENDIX

Listing of claims involved in the appeal.

1. A retaining-locking system for chain link fence slats, comprising:
 - a plurality of fence slat elements, said slat elements being sized and shaped to be interwoven between consecutive links of a chain link fence; each of said slat elements having a first end, a second end, a front surface, a back surface, a first side edge, a second side edge and a notch orthogonally oriented to a long axis of said slat, being disposed between said first end and said second end and extending inwardly from said front surface toward said back surface for a first predetermined distance;
 - a retaining-locking strip, said strip being formed of resilient material, having a first end, a second end, an inner surface, an outer surface, an upper edge, a lower edge and at least one securing protrusion; said securing protrusion having a base, a back surface, an upper surface, a lower surface and being sized and shaped to fit slidably within said notch and being disposed upon said outer surface of said strip; and whereby, when said slat elements are interwoven into between consecutive links of a chain link fence with each of said notches aligned with one another, said retaining-locking strip inserted between said slat elements and said links, oriented orthogonally to said slats with said securing protrusion disposed within said slats, said strip will urge said slats toward said links, thereby retaining said slats within said chain link fence.
2. The retaining-locking system for chain link fence slats, as described in Claim 1, wherein said notch in each of said slat elements is rectangular in cross-section.

3. The retaining-locking system for chain link fence slats, as described in Claim 1, wherein said inner surface of said retaining-locking strip is concave and said outer surface of said retaining-locking strip is convex.
4. The retaining-locking system for chain link fence slats, as described in Claim 1, wherein said inner surface of said retaining-locking strip is substantially parallel to said outer surface of said retaining-locking strip when said strip is compressed between said securing protrusion and said inner surface.
8. The retaining-locking system for chain link fence slats, as described in Claim 1, wherein either of said first end and said second end of said slat element is pointed, thereby permitting the retaining-locking strip to be interwoven first between consecutive links of said chain link fence and successive slat elements to then be interwoven orthogonally between consecutive links of said chain link fence, said pointed end permitting said slat element to compress said retaining-locking strip until said securing protrusion is aligned with said notch.
11. The retaining-locking system for chain link fence slats, as described in Claim 1, wherein said slat elements are of tubular construction.
12. The retaining-locking system for chain link fence slats, as described in Claim 11, wherein said slat elements include at least one internal reinforcing rib.
14. The retaining-locking system for chain link fence slats, as described in Claim 1, wherein said inner surface of said retaining-locking strip is concave and said outer surface of said retaining-locking strip is convex, said retaining-locking strip having at least one securing protrusion disposed at a point spaced from at least one of said upper edge and said lower edge of said strip.

(9) EVIDENCE APPENDIX

No evidence is being submitted.

(10) RELATED PROCEEDINGS APPENDIX

There are no related proceedings.

AF ✓
Tfw



Applicant: Paul Campbell
Serial No.: 10/740,697
Filed: December 18, 2003
Examiner: Michael P. Ferguson
Art Unit: 3679
Docket: 03-456-B

CERTIFICATE OF FIRST CLASS MAILING UNDER 37 CFR 1.8

The undersigned hereby certifies that the following:

1. Response to Second Notice of Non-Compliant Appeal Brief (in triplicate)
2. Credit Card Payment Form Authorizing \$60.00
3. Return Receipt Postcard

are being deposited with the U.S. Postal Service on the date subscribed below, with sufficient postage as first class mail, in an envelope addressed to Mail Stop Appeal-Brief Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Donna Miller Date: 6-28-06
Donna Miller